AMENDMENT NO._____ Calendar No._____

Purpose: To provide for the establishment of a Federal clean portfolio standard.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 6

To reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DOMENICI (for himself, Mr. CRAIG, and Mr. BENNETT)

Viz:

At the end, add the following:

TITLE VIII—FEDERAL CLEAN PORTFOLIO STANDARD

SEC. 801. FEDERAL CLEAN PORTFOLIO STANDARD.

(a) IN GENERAL.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

"SEC. 610. FEDERAL CLEAN PORTFOLIO STANDARD.

''(a) CLEAN ENERGY REQUIREMENT.—

''(1) IN GENERAL.—Each electric utility that sells electricity to electric consumers shall obtain a percentage of the base amount of electricity it sells to electric consumers in any calendar year from new clean energy or existing clean energy. The percentage obtained in a calendar year shall not be less than the amount specified in the following table:

"Calendar year:	**Minimum annual percentage:**
2010 through 2012	5
2013 through 2016	10
2017 through 2019	15
2020 through 2030	20

''(2) MEANS OF COMPLIANCE.—An electric utility shall meet the requirements of paragraph (1) by—

''(A) submitting to the Secretary clean energy credits issued under subsection (b);

''(B) making alternative compliance payments to the Secretary at the rate of 2 cents per kilowatt hour (as adjusted for inflation under subsection (g)); or

''(C) a combination of activities described in subparagraphs (A) and (B).

''(b) CLEAN ENERGY CREDIT TRADING PROGRAM.—

''(1) IN GENERAL.—Not later than July 1, 2009, the Secretary shall establish a clean energy credit trading program under which electric utilities shall submit to the Secretary clean energy credits to certify the compliance of the electric utilities with respect to obligations under subsection (a)(1).

''(2) ADMINISTRATION.—As part of the program, the Secretary shall—

''(A) issue tradeable clean energy credits to generators of electric energy from new clean energy;

''(B) issue nontradeable clean energy credits to generators of electric energy from existing clean energy;

''(C) issue clean energy credits to electric utilities associated with State portfolio standard compliance mechanisms pursuant to paragraph (6);

''(D) ensure that a kilowatt hour, including the associated clean energy credit, shall be used only once for purposes of compliance with this Act;

''(E) allow double credits for generation from facilities on Indian land, and triple credits for generation from small renewable distributed

generators (meaning those no larger than 1 megawatt); and

''(F) ensure that, with respect to a purchaser that, as of the date of enactment of this section, has a purchase agreement from a clean energy facility placed in service before that date, the credit associated with the generation of clean energy under the contract is issued to the purchaser of the electric energy, to the extent that the contract does not already provide for the allocation of the credit.

''(3) DURATION.—A credit described in subparagraph (A), (B), or (C) of paragraph (2) may only be used for compliance with this section during the 3-year period beginning on the date of issuance of the credit.

''(4) TRANSFERS.—An electric utility that holds credits in excess of the quantity of credits needed to comply with subsection (a) may transfer the credits to another electric utility in the same utility holding company system.

''(5) DELEGATION OF MARKET FUNCTION.—The Secretary may delegate to an appropriate market-making entity the administration of a national tradeable clean energy credit market for purposes of

creating a transparent national market for the sale or trade of clean energy credits.

''(6) CREDIT FOR STATE ALTERNATIVE COMPLIANCE PAYMENTS AND OTHER FINANCIAL COMPLIANCE MECHANISMS.—

''(A) IN GENERAL.—In the case of an electric utility subject to a State portfolio standard program that requires the generation of electricity from clean energy and makes alternative compliance payments under the program in satisfaction of applicable State requirements or complies by other financial mechanisms, the Secretary shall issue clean energy credits to the electric utility in an amount that corresponds to the amount of the State alternative compliance payment or other financial compliance mechanism as though that payment or mechanism had been made to the Secretary under this subsection.

''(B) APPLICATION.—A clean energy credit issued under subparagraph (A) may be—

''(i) applied against the required annual percentage of an electric utility; or

''(ii) transferred for use only by an associate company of the electric utility.

''(c) ENFORCEMENT.—

''(1) CIVIL PENALTIES.—Any electric utility that fails to meet the compliance requirements of subsection (a) shall be subject to a civil penalty.

''(2) AMOUNT OF PENALTY.—The amount of the civil penalty shall be determined by multiplying the number of kilowatt-hours of electric energy sold to electric consumers in violation of subsection (a) by the greater of—

''(A) the value of the alternative compliance payment, as adjusted to reflect changes for the 12-month period ending the preceding November 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor; or

''(B) 200 percent of the average market value of clean energy credits during the year in which the violation occurred.

''(3) PROCEDURE FOR ASSESSING PENALTY.—Subject to subsection (h)(2), the Secretary shall assess a civil penalty under this subsection in accordance with the procedures prescribed by section 333(d) of the Energy Policy and Conservation Act of 1954 (42 U.S.C. 6303).

''(d) STATE CLEAN ENERGY ACCOUNT PROGRAM.—

''(1) IN GENERAL.—There is established in the Treasury a State clean energy account program.

''(2) DEPOSITS.—All money collected by the Secretary from the sale of clean energy credits, the provision of alternative compliance payments, and the assessment of civil penalties under this section shall be deposited into the clean energy account established pursuant to this subsection.

''(3) TRANSFER.—Amounts deposited in the State clean energy account shall be transferred, subject to appropriations, to the State in which the amounts were collected.

''(4) USE.—Amounts transferred to a State under paragraph (3) shall be used by the State for the purposes of promoting clean energy production, including programs that promote technologies that reduce the use of electricity at customer sites.

''(e) RULES.—The Secretary shall issue rules implementing this section not later than 1 year after the date of enactment of this section.

''(f) EXEMPTIONS.—This section shall not apply in any calendar year to an electric utility—

''(1) that sold less than 4,000,000 megawatt-hours of electric energy to electric consumers during the preceding calendar year; or

''(2) in Hawaii.

''(g) INFLATION ADJUSTMENT.—Not later than December 31 of each year beginning in 2008, the Secretary shall adjust for inflation the rate of alternative compliance payments under subsection (a)(2)(B) and the amount of the civil penalty per kilowatt-hour under subsection (c)(2).

''(h) WAIVER.—

''(1) IN GENERAL.—The Secretary may waive the compliance requirements of subsection (a) with respect to an electric utility if the Secretary determines that the electric utility cannot meet the requirements for reason of force majeure in effect on any date after the date that is 5 years before the date of enactment of this section.

''(2) CIVIL PENALTIES.—

''(A) IN GENERAL.—The Secretary may mitigate or waive a civil penalty under subsection (c) if the electric utility was unable to comply with subsection (a) for reasons outside of the reasonable control of the utility in effect after the date of enactment of this section.

''(B) AMOUNT OF REDUCTION.—The Secretary shall reduce the amount of any penalty determined under subsection (c)(2) by an amount paid by the electric utility to a State for failure to comply with the requirement of a State clean energy program.

''(i) GOVERNOR CERTIFICATION.—On submission by the Governor of a State to the Secretary of a notification that the State has in effect, and is enforcing, a State portfolio standard that substantially contributes to the overall goals of the Federal clean portfolio standard under this section, the State may elect not to participate in the program under this section.

''(j) DEFINITIONS.—In this section:

''(1) BASE AMOUNT OF ELECTRICITY.—The term 'base amount of electricity' means the total amount of electricity sold by an electric utility to electric consumers in a calendar year, excluding—

''(A) electricity generated by a hydroelectric facility (including a pumped storage facility but excluding incremental hydropower);

''(B) electricity generated through the incineration of municipal solid waste; and

''(C) electricity generated from nuclear power.

''(2) DEMAND RESPONSE.—The term 'demand response' means a reduction in electricity usage by end-use customers as compared to the normal consumption patterns of the customers, or shifts in electric usage by end-use customers from on-peak hours of an electric utility to off-peak hours of an electric utility that do not result in increased usage, in response to an incentive payment or a program to reduce electricity use at any time at which—

''(A) wholesale market prices are high; or

''(B) system reliability is jeopardized.

''(3) DISTRIBUTED GENERATION FACILITY.—The term 'distributed generation facility' means a facility at a customer site.

''(4) ENERGY EFFICIENCY.—The term 'energy efficiency' means—

''(A) demand response; or

''(B) the use of less energy in homes, buildings, or industry through methods such as the installation of more efficient equipment, appliances, or other technologies to achieve the same level of function or economic activity achieved on the date of enactment of this section.

''(5) EXISTING CLEAN ENERGY.—The term 'existing clean energy' means, except as provided in paragraph (9)(B), electric energy generated at a facility (including a distributed generation facility) placed in service prior to January 1, 2001, from solar, wind, or geothermal energy, ocean energy, biomass (as defined in section 203(a) of the Energy Policy Act of 2005 (42 U.S.C. 15852(a))), or landfill gas.

''(6) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2) of the Internal Revenue Code of 1986).

''(7) INCREMENTAL GEOTHERMAL PRODUCTION.—

''(A) IN GENERAL.—The term 'incremental geothermal production' means for any year the excess of—

''(i) the total kilowatt hours of electricity produced from a facility (including a distributed generation facility) using geothermal energy; over

''(ii) the average annual kilowatt hours produced at such facility for 5 of the previous 7 calendar years before the date

of enactment of this section after eliminating the highest and the lowest kilowatt hour production years in such 7-year period.

''(B) SPECIAL RULE.—A facility described in subparagraph (A) that was placed in service at least 7 years before the date of enactment of this section shall commencing with the year in which such date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in subparagraph (A)(ii) with such cumulative sum not to exceed 30 percent.

''(8) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional energy generated as a result of efficiency improvements or capacity additions made on or after January 1, 2001, or the effective date of an existing applicable State clean portfolio standard program at a hydroelectric facility that was placed in service before that date. The term does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or ca-

pacity additions. Efficiency improvements and capacity additions shall be measured on the basis of the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission.

''(9) NEW CLEAN ENERGY.—The term 'new clean energy' means—

''(A) electric energy generated at a facility (including a distributed generation facility) placed in service on or after January 1, 2001, from—

''(i) solar, wind, or geothermal energy or ocean energy;

''(ii) biomass (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b));

''(iii) landfill gas;

''(iv) new hydropower that does not require the construction of any dam;

''(v) new nuclear generation;

''(vi) a fuel cell;

''(vii) energy efficiency or demand response as result of programs conducted by the electric utility, as measured and

verified by a method acceptable to the Secretary;

''(viii) an inherently low-emission technology that captures and stores carbon; or

''(ix) such other clean energy sources as the Secretary determines, by regulation, will advance the goals of this section; and

''(B) for electric energy generated at a facility (including a distributed generation facility) placed in service prior to the date of enactment of this section—

''(i) the additional energy above the average generation during the period beginning on January 1, 1998, and ending on January 1, 2001, at the facility from—

''(I) solar or wind energy or ocean energy;

''(II) biomass (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b));

''(III) landfill gas;

''(IV) incremental hydropower; or

''(V) incremental nuclear generation; or

"(ii) incremental geothermal production.

"(10) OCEAN ENERGY.—The term 'ocean energy' includes current, wave, tidal, and thermal energy.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. prec. 2601) is amended by adding at the end of the items relating to title VI the following:

"Sec. 610. Federal clean portfolio standard.".